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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil No. 10-6307-HO
	)	
v.	)	O R D E R
	)	
TERRY F. ZDUN; CAROL J. ZDUN;	)	
GARY TEDDER, Trustee of the	)	
IRENE LACEY TRUST; SAMUEL WARNER,	)	
Trustee of the IRENE LACEY TRUST;	)	
WELLS FARGO BANK, N.A.; LOANCITY,	)	
INC.; MORTGAGE ELECTRONIC	)	
REGISTRATION SYSTEMS, INC.; and	)	
DOUGLAS COUNTY, OREGON,	)	
	)	
Defendants.	)	

The United States brings this action to reduce outstanding tax

liabilities against defendants Terry and Carol Zdun to judgment and

to foreclose tax liens on property located in Douglas County,

Oregon. On January 18 and January 26, 2011, defendants Samuel

Warner and Gary Tedder, Trustees of the Irene Lacey Trust, each

filed answers in their capacities as trustees. The government expresses doubt whether Warner and Tedder have the authority to act on behalf of beneficiaries of the purported Trust. The government, however, failed to move within the time period generally prescribed by Fed. R. Civ. P. 12 to strike the answer. Accordingly, the government now moves for leave to file a motion to strike. Because any further pleadings by Warner and Tedder would similarly be subject to a motion to strike, the court grants leave to file the motion to strike the answer and the government shall file such motion as soon as practicable.

The United States also moves to dismiss a counterclaim asserted by defendants Terry and Carol Zdun. The Zduns allege a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO). There can be no RICO claim against the federal government. Berger v. Pierce, 933 F.2d 393, 397 (6th Cir. 1991). In addition, the United States has not waived its sovereign immunity with respect to RICO. Accordingly, the motion to dismiss is granted.

CONCLUSION

For the reasons stated above, the United States' motions for leave to file a motion to strike (#61) and to dismiss (#59) are granted.

DATED this __21st__ day of April, 2011.

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United States District Judge

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